



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 19, 2003

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2003-9220

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 193333.

The Comptroller of Public Accounts (the "comptroller") received a request for certain information related to state employees who have retired, as well as the number of employees in each agency as of August, 2003. You state that the requestor has been provided with responsive information concerning the number of employees in each agency. You claim that the remaining requested information may be excepted from disclosure under section 552.101 of the Government Code. This office also received arguments from the Employees Retirement System of Texas ("ERS"), in relation to the requested information. *See* Gov't Code § 552.304 (providing that interested party may submit written comments stating why information at issue in request for attorney general decision should or should not be released). We have considered the claimed exception and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. As recently amended by the 78th Legislature, section 815.503 of the Government Code provides in pertinent part that:

[r]ecords of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure, and the retirement system is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

Act of June 2, 2003, 78th Leg., R.S., ch. 1111, § 28, 2003 Tex. Sess. Law Serv. 3183 (to be codified as an amendment to Gov't Code § 815.503(a)); *see also* § 811.001(15) (defining "retirement system" as ERS). ERS states that the requested information relating to retirees can only be derived from information initially provided to ERS, and that the requested information is not retrievable except through reference to confidential ERS records. The information originates with ERS and is provided to employing state agencies with a legitimate need for it, ERS explains. ERS further represents that these agencies' and the comptroller's actions relative to the information are done in cooperation with or on behalf of ERS. Therefore, ERS argues, the information derived from its records maintains its confidentiality under section 815.503 in the possession of the comptroller. Based on ERS's representations, we conclude that the information at issue constitutes records of retirees under retirement plans administered by ERS that are in the custody of the comptroller, a governmental agency acting in cooperation with ERS. Therefore, the submitted documents are confidential under section 815.503, and are excepted from disclosure under section 552.101 of the Government Code. As we are able to make this determination, we do not address ERS's remaining argument.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 193333

Enc. Submitted documents

c: Mr. Stuart Greenfield
3029 Thrushwood Drive
Austin, Texas 78757
(w/o enclosures)